

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

D'Pergo Custom Guitars, Inc

v.

Civil No. 17-cv-747-LM

Sweetwater Sound, Inc.

PROCEDURAL ORDER

On today's date, the court held a video conference in this case. Attorneys Robert Allen, Robert J. Steiner, Lawrence Hadley, and Thomas Burke appeared for plaintiff D'Pergo Custom Guitars. Attorneys Lauren Pritchard and Edward Sackman appeared for defendant Sweetwater Sound. The court ruled from the bench on motions in limine and other issues. The rulings are briefly summarized below.

For the reasons stated on the record:

1. Sweetwater's motion in limine to exclude the testimony of Ted Rasch and John Koveos (doc. no. 228) is conditionally denied. D'Pergo must make these witnesses available today for conversation with Sweetwater's counsel for at least one hour per witness. If this conversation occurs then the motion is denied and their testimony is admissible; if this conversation does not occur then the motion is granted, and they may not testify.
2. Sweetwater's motion to exclude David Stewart's October 2012 blog post (doc. no. 229) is denied as moot in light of counsel's agreement at the hearing.
3. Sweetwater's motion to exclude evidence of willfulness (doc. no. 230) is granted. D'Pergo may not argue that Sweetwater's actions were willful with respect to damages. D'Pergo may introduce any evidence of willfulness with respect to the CPA claim outside the presence of the jury. If such evidence is

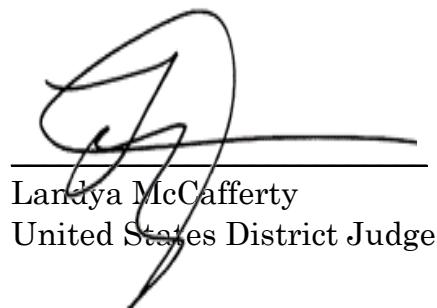
inadvertently revealed in the jury's presence then Sweetwater may request a limiting instruction.

4. D'Pergo's motion in limine to exclude Sweetwater's exhibits 8-12 (doc. no. 231) is denied.
5. D'Pergo's assented-to oral motion to sequester fact witnesses is granted. A representative from each party and their general counsel will be permitted to watch the complete trial, but fact witnesses will be excused except during their testimony.
6. The court resolved all pending jury instruction disputes (doc. nos. 162, 165, 190, 232, 237). The court will provide the parties with draft jury instructions early on in the trial.
7. Lastly, the parties committed to meet and confer and resolve ongoing disputes throughout the trial.

CONCLUSION

For the reasons stated on the record, doc. nos. [228](#) and [229](#) are denied, doc. no. [230](#) is granted, doc. no. [231](#) is denied, the oral motion to sequester witnesses is granted, and the court resolved all pending jury instruction disputes in doc. nos. [162](#), [165](#), [190](#), [232](#), and [237](#).

SO ORDERED.



Landya McCafferty
United States District Judge

June 21, 2021

cc: Counsel of Record.